

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

DR. THOMAS EDSALL and GRISEL  
EDSALL,

Plaintiffs,

V.

ASSUMPTION COLLEGE,  
DR. THOMAS R. PLOUGH,  
DR. JOSEPH F. GOWER, and  
DR. JOHN F. McClymer,

Defendants.

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) Civil Action No.  
) 04-40106 FDS

**DEFENDANT THOMAS R. PLOUGH'S MOTION FOR  
RECONSIDERATION OF MOTION TO DISMISS COUNT IV**

Defendant, Dr. Thomas R. Plough, hereby moves that the Court reconsider its decision on Dr. Plough's Motion to Dismiss him from Count IV of the Complaint on the grounds that the Court decided the Motion based on a failure of the parties to provide the Court with a copy of the Plaintiff's Charge of Discrimination filed with Massachusetts Commission Against Discrimination and, therefore, the Court ruled that it was "unable to examine it and determine whether Dr. Plough was named either in form or substance." A copy of the relevant portion of the Court's Memorandum and Order dated March 31, 2005 is attached to the Affidavit of the undersigned submitted herewith as Exhibit A. A true copy of Dr. Edsall's MCAD charge is attached to the Affidavit of the undersigned submitted herewith and attached hereto as Exhibit B.

A review of the Charge of Discrimination reveals that Dr. Thomas R. Plough is not named as a party in the charge, and neither his name nor his position as President of

the college is mentioned anywhere in the document. As such, Plaintiffs have failed to comply with the requirements of G.L.c. 151B, which requires Plaintiff to file a charge of discrimination with the MCAD against the defendant before filing a complaint in court. Butner v. Department of State Police, 60 Mass.App.Ct. 461 (2004), appeal denied 441 Mass. 1105 (2004); Powers v. H.B. Smith Company, Inc., 42 Mass.App.Ct. 657, 667 (1997). Now that the Court has a complete record on which it can consider Dr. Plough's Motion, Defendant Dr. Plough respectfully requests that this Court reconsider its decision on this issue, determine that Plaintiff has failed to state a claim against Dr. Plough under M.G.L. c. 151B, and dismiss Dr. Plough from Count IV of Plaintiff's Complaint.

Respectfully submitted,  
DR. THOMAS R. PLOUGH,  
Defendant

By his attorneys,

/ s / Douglas F. Seaver  
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Douglas F. Seaver (BBO# 450140)  
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28 State Street  
Boston, MA 02109  
617.345.9000

Dated : April 4, 2005

#### **CERTIFICATE OF SERVICE**

I, Douglas F. Seaver, hereby certify that on this 4th day of April, 2005, I served a copy of Defendant Thomas R. Plough's Motion for Reconsideration of Motion to Dismiss Count IV upon Plaintiffs by mailing the same via first class mail postage paid, to Plaintiffs' counsel of record, James B. Krasnoo, Esq. & Paul J. Klehm, Esq., Law Offices of James B. Krasnoo, 23 Main Street, Terrace Level, Andover, MA 01810 and Karim H. Kamal, Esq., 630 Fifth Avenue, Suite 3163, New York, NY 10111.

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Douglas F. Seaver